IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.2.2007

CORAM

THE HON'BLE MR.JUSTICE S.ASHOK KUMAR

CRP(PD) No. 282 of 2006

and C.M.P.No.2577 Of 2006 & VCMP.No.367 of 2006

P. Subbiah Gounder ... Petitioner / Petitioner
2nd Defendant

Vs.

1. Sakthi Gopala Krishnan

2. Jayaraman

3. Mylathal ... Respondents/ Respondents
Plaintiffs 1 and 2
ISt Defendant

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 26.10.2005 made in I.A.No. 963 of 2004 in O.S.No. 401 of 2003 on the file of the District Munsif, Pollachi.

For Petitioner : Mr.Kannan for
M/s. Sampathkumar Associates

For Respondents : Mr. K. Selvaraj

ORDER

As against the the dismissal of the I.A.No:963 of 2004 filed by the revision petitioner/second defendant under Order 7 Rule 11 CPC, to reject the Plaint, this revision has been filed.

2. According to the revision petitioner, there is no proper cause of action for instituting the present suit by the respondent/plaintiff, because in all the earlier proceedings before various forums, the first defendant has has lost his case and now instigated the other plaintiffs to file the present suit. But the learned District Munsif, Pollachi, accepting the averments of the plaintiffs as well as the decisions of the Apex Court, dismissed the said I.A., holding that maintainability of the suit

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has to be decided on the averments contained in the plaint and any allegation that the earlier decisions will bind the plaintiffs and there is there is no cause of action or the issue of limitation could be determined only after letting in sufficient evidence in that regard during trial. Aggrieved over the same, the present revision has been preferred.

3. Mr.Kannan, Learned Counsel appearing for the revision petitioner would contend that the trial Judge failed to look into the Section 97 of the Indian Succession Act. According to him, as per the Will, the plaintiffs do get any share in the suit properties. Further the sale deed dated 28.10.1972 is not void, but can only be voidable and that a suit for partition will not lie without setting aside the sale. Therefore, the present suit is nothing but sheer abuse of process of law.

4. A perusal of the earlier proceedings between the parties would throw a light for the summary disposal of this CRP. The suit property was owned by one Smt.Krishnammal and she executed a Will dated 18.8.1969, by which she bequeathed her entire property to her daughter Smt.Mylathal, the third respondent herein. Her sons, the respondents 1 and 2 herein have no right, title or interest in the suit property since the language of the WILL is clear and simple. Based on the said Will, Smt.Mylathal sold 4 acres and 56 cents to the revision petitioner by sale deed dated 28.10.1972. A suit for specific performance was fled by the revision petitioner before the Sub Judge, Udumalpet in O.S.No.24 of 1984 and the same was decreed on 30.4.1986. Following the decree, in EPR.No.66 of 1986 the sale deed was executed in favour of Dr.Jayakumar, the nominee/son of the revision petitioner, Subbiah Gounder on 20.8.1987 by the Sub Judge, Udumalpet on behalf of Smt.Mylathal. Smt.Mylathal, the third respondent filed A.S.No:54 of 1987 against O.S.No:24 of 1984. The said appeal was dismissed on 29.7.1989. Against the said judgment and decree passed in A.S.NO:54 of 1987, Smt.Mylathal filed S.A.No.801 of 1991 before this Court which was also dismissed on 10.7.1991. Having lost all the cases before all the courts, the third respondent further instigated her brother Kandasamy to file a suit in O.S.No:394 of 1990 before the Sub Court, Udumalpet for a declaration that he is entitled to share in the suit schedule property and the same was dismissed for default on 15.3.1993. The I.A.No.979 of 1993 filed to restore the said suit was also dismissed for not paying the cost as ordered by the Sub Court, Udumalpet. He also field another suit in O.S.No:278 of 1999 before the same court and in the said suit, the revision petitioner herein filed I.A.No.168 of 2000 for rejection of the plaint and the same was dismissed on 12.6.2000. However, in the CRP.1826 of 2000 filed before this court against the dismissal order in I.A.NO:168 of 2000 was set aside and the CRP was allowed on 15.6.2005 with a direction to reject the plaint in O.S.No:278 of 1999.

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5. Yet, again, Smt.Mylathal the third respondent herein filed the present suit in O.S.No:401 of 2003, before the District Munsif Court, Pollachi, through her sons when they have no right at all. The above previous litigation would definitely establish the malafide intention of the third respondent who has instigated her sons and caused them to file the suit when the revision petitioner is having the bona fide title to the suit property as evidenced by the judgment and decrees of the various courts. In fact the legal battle is going on for the past 32 years, yet the revision petitioner is unable to enjoy the fruits of the decrees till date. The recital in the Will would show that Mylathal has been bequeathed with absolute right in the suit schedule property, which has been sold to the revision petitioner. The very same schedule of property has been described in all the earlier suits filed by the respondents. Therefore having lost in the earlier legal battle, the respondents have no manner of right to again an again approaching the court, which is nothing but abuse of process of law. The right or claim made by the respondents/plaintiffs is manifestly false and vexatious.

6. Learned counsel for the revision petitioner also relied upon the judgment of V.R.Krishna Iyer reported in AIR 1977 SC 2421 (Arivanandam Vs. Satyapal), wherein it has been held as follows:-

> "5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under O.VII R.11, CPC taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under O.X CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men (Ch.XI) and must be triggered against them In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of mahatma Gandhi "it is dangerous to be too good".

7. The above facts would only go to show that the respondents by playing fraud and misrepresentation have filed the suit. The

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plaintiffs have not approached the court with clean hands and are guilty of fraud, suppression of facts and misrepresentation and as such they are not entitled for any relief. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage as has been held by the Apex Court in S.P.Chengalvaraya Naidu V. Jagannath reported in 1994 (1) SCC 1. This aspect of the matter has also been considered by the Hon'ble Supreme Court in its decisions in Roshan Deen V. Preeti Lal (2002 (1) SCC 100); Ram Preeti Yadav V. U.P.Board of High School and intermediate Education (2003 (8) SCC 311); Ashok Leyland Ltd. V. State of T.N. (2004 (3) SCC 1); and State of A.P. And another Vs. T.Suryachandra Rao (2005 (6) SCC 149. The Court has the discretion to strike out the pleading on being satisfied of there being no chance of success in the suit. What is required to be disclosed by the plaintiff is a clear right to sue and failure to do so must necessarily entail in rejection of the plaint. In view of the settled legal position of law, the case of the plaintiffs has to be thrown out at the threshold and in this case, it is the duty of the court to reject the Plaint.

8. In the result, the CRP is allowed setting aside the order passed in I.A.No. 963 of 2004 in O.S.No. 401 of 2003 by the learned District Munsif, Pollachi and the learned Judge is directed to reject the Plaint by striking off the same from the suit register.

9. Consequently, CMP.No.2577 of 2006 is closed and VCMP.No.367 of 2006 is dismissed. No costs.

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Copy to:

The District Munsif,
Pollachi.

1 cc to M/s. Sampathkumar, Associates, Sr. 11672
1 cc to Mr.K. Selvaraj, Advocate, sr. 12163

CRP(PD)No. 282 of 2006

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